

Jul 30, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SILVIA M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL

SECURITY ADMINISTRATION,

Defendant.

No. 1:17-cv-03176-SAB

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT;  
DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are Plaintiff Silvia M's Motion for Summary Judgment, ECF No. 12, and Defendant Commissioner of the Social Security Administration's Cross-Motion for Summary Judgment, ECF No. 14. The motions were heard without oral argument. Plaintiff is represented by D. James Tree; Defendant is represented by Assistant United States Attorney Timothy Durkin and Special Assistant United States Attorney Catherine Escobar.

**Jurisdiction**

On October 22, 2012, Plaintiff filed a Title II application for disability insurance benefits as well as a Title XVI application for supplemental income. Plaintiff alleges an onset date of September 18, 2012.

Plaintiff's application was denied initially and on reconsideration. On August 10, 2015, Plaintiff appeared and testified in Yakima, Washington before the ALJ at a video hearing while the ALJ presided from Seattle, Washington. The

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1 ALJ issued a decision on June 6, 2016, finding that Plaintiff was not disabled.  
2 Plaintiff timely requested review by the Appeals Council, which denied the request  
3 on August 22, 2017. The Appeals Council's denial of review makes the ALJ's  
4 decision the final decision of the Commissioner.

5 Plaintiff filed a timely appeal with the United States District Court for the  
6 Eastern District of Washington on October 17, 2017. The matter is before this  
7 Court under 42 U.S.C. § 405(g).

### 8 Sequential Evaluation Process

9 The Social Security Act defines disability as the inability "to engage in any  
10 substantial gainful activity by reason of any medically determinable physical or  
11 mental impairment which can be expected to result in death or which has lasted or  
12 can be expected to last for a continuous period of not less than twelve months." 42  
13 U.S.C. § 1382c(a)(3)(A). A claimant shall be determined to be under a disability  
14 only if her impairments are of such severity that the claimant is not only unable to  
15 do her previous work, but cannot, considering claimant's age, education, and work  
16 experiences, engage in any other substantial gainful work which exists in the  
17 national economy. 42 U.S.C. § 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential evaluation process  
19 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*  
20 *Yuckert*, 482 U.S. 137, 140-42 (1987).

21 Step 1: Is the claimant engaged in substantial gainful activity? 20 C.F.R.  
22 § 416.920(b). Substantial gainful activity is work done for pay and requires  
23 compensation above the statutory minimum. *Id.*; *Keyes v. Sullivan*, 894 F.2d 1053,  
24 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity, benefits are  
25 denied. 20 C.F.R. § 416.971. If she is not, the ALJ proceeds to step two.

26 Step 2: Does the claimant have a medically-severe impairment or  
27 combination of impairments? 20 C.F.R. § 416.920(c). If the claimant does not have  
28 a severe impairment or combination of impairments, the disability claim is denied.

1 A severe impairment is one that lasted or must be expected to last for at least 12  
2 months and must be proven through objective medical evidence. 20 C.F.R. §  
3 416.908-.909. If the impairment is severe, the evaluation proceeds to the third step.

4 Step 3: Does the claimant's impairment meet or equal one of the listed  
5 impairments acknowledged by the Commissioner to be so severe as to preclude  
6 substantial gainful activity? 20 C.F.R. § 416.920(d); 20 C.F.R. § 404 Subpt. P. App.  
7 1. If the impairment meets or equals one of the listed impairments, the claimant is  
8 conclusively presumed to be disabled. *Id.* If the impairment is not one conclusively  
9 presumed to be disabling, the evaluation proceeds to the fourth step.

10 Before considering Step 4, the ALJ must first determine the claimant's  
11 residual functional capacity. 20 C.F.R. § 416.920(e). An individual's residual  
12 functional capacity is her ability to do physical and mental work activities on a  
13 sustained basis despite limitations from her impairments.

14 Step 4: Does the impairment prevent the claimant from performing work she  
15 has performed in the past? 20 C.F.R. § 416.920(f). If the claimant is able to  
16 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform  
17 this work, the evaluation proceeds to the fifth and final step.

18 Step 5: Is the claimant able to perform other work in the national economy in  
19 view of her age, education, and work experience? 20 C.F.R. § 416.920(g).

20 The initial burden of proof rests upon the claimant to establish a prima facie  
21 case of entitlement to disability benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th  
22 Cir. 1999). This burden is met once a claimant establishes that a physical or mental  
23 impairment prevents her from engaging in her previous occupation. *Id.* At step five,  
24 the burden shifts to the Commissioner to show that the claimant can perform other  
25 substantial gainful activity. *Id.*

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#### 28 Standard of Review

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1 The Commissioner's determination will be set aside only when the ALJ's  
2 findings are based on legal error or are not supported by substantial evidence in the  
3 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing  
4 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
5 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."  
6 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial  
7 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
8 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the  
9 ALJ's denial of benefits if the evidence is susceptible to more than one rational  
10 interpretation, one of which supports the decision of the administrative law judge.  
11 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). The  
12 Court reviews the entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.  
13 1985). "If the evidence can support either outcome, the court may not substitute its  
14 judgment for that of the ALJ." *Matney*, 981 F.2d at 1019.

15 A decision supported by substantial evidence will be set aside if the proper  
16 legal standards were not applied in weighing the evidence and making the decision.  
17 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).  
18 An ALJ is allowed "inconsequential" errors as long as they are immaterial to the  
19 ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d  
20 1050, 1055 (9th Cir. 2006).

### 21 **Statement of Facts**

22 The facts have been presented in the administrative transcript, the ALJ's  
23 decision, and the briefs to this Court; only the most relevant facts are summarized  
24 here.

25 Plaintiff immigrated to the United States from Mexico in 1980. She was  
26 assisted at the hearing by a Spanish interpreter and does not speak English. She  
27 completed the 6th grade. She was married, but divorced in 2000. She reports that  
28 she experienced domestic violence at the hands of her husband. She also

1 experienced a workplace accident in 1995. Her hand was severely cut after it was  
2 pulled into a moving machine. She went to physical therapy for about five years to  
3 regain the use of her hand. Due to the broken bones and severed tendons, her hand  
4 is deformed. She has past work in California at labs where they made cosmetics.  
5 She worked from 1997 to 2000 as a salesperson for retail stores. From 1999 to  
6 2005, she worked as an assembly worker in factories, and in 2007 to 2012, she  
7 worked as a sorter in a fruit warehouse.

8 In February 2011, Plaintiff was assaulted by her boyfriend. He hit her in the  
9 head with a screwdriver and she lost consciousness. He also kicked her. She ended  
10 up with bruises all over. Since that assault, she developed chronic pain symptoms,  
11 including headaches, neck pain, dizziness, and atypical facial pain. She also  
12 experiences back pain. MRI imaging reveals moderately severe degenerative  
13 stenosis. In January, 2012, Plaintiff became dizzy and fainted at work. The record  
14 demonstrates that she has numerous visits to the emergency room where she  
15 complains of pain, numbness, and weakness in her extremities.

16 In September, 2012, she was diagnosed with Multiple Sclerosis and it was at  
17 that time that she quit working. Subsequent testing and examinations ruled out this  
18 disease, although Plaintiff continues to suffer with chronic pain, as well as  
19 dizziness, blurry vision, and frequent falls. She has trouble sleeping and  
20 experiences nightmares, although at the hearing, she testified that she recently  
21 began medication that is helping with the nightmares. At times she has difficulty  
22 walking because of the pain.

23 She rents a room from a friend, who helps her with her daily living tasks,  
24 including giving rides to get groceries, opening cans for cooking, and picking up  
25 things that are too heavy. She is unable to go out in public by herself. She is unable  
26 to tie her shoes, or button shirts. She usually wears shorts or sweats. She indicates  
27 that she has periods where she is depressed, sad, and cries.

#### 28 **The ALJ's Findings**

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1 The ALJ found that Plaintiff met the insured status requirements of the  
2 Social Security Act through December 31, 2017. AR 34.

3 At step one, the ALJ found Plaintiff has not engaged in substantial gainful  
4 activity since September 18, 2012. AR 34.

5 At step two, the ALJ found Plaintiff has the following severe impairments:  
6 degenerative disc disease; status post history of right hand fracture; diabetes  
7 mellitus; hypertension; affective disorder; somatoform disorder. AR 34. The ALJ  
8 specifically found the following impairments to be non-severe: headaches,  
9 hypertension and mild left shoulder degenerative changes at the  
10 acromioclavicular(AC) joint. AR 34. The ALJ also held the evidence does not  
11 show that multiple sclerosis (MS) is medically determinable nor does it establish  
12 fibromyalgia. AR 34-35.

13 At step three, the ALJ found that Plaintiff's impairments or combination of  
14 impairments do not meet or medically equal any Listing. AR 21. Specifically, the  
15 ALJ reviewed Sections 1.02 (major dysfunction of a joint), 1.04 (disorders of the  
16 spine), 1.07 (fracture of an upper extremity), 12.04 (affective mental disorders),  
17 and 12.07 (somatic symptom and related disorders) of the listings of impairments.

18 The ALJ concluded that Plaintiff has the residual functional capacity to  
19 perform:

20 light work as defined in 20 CFR 404.1567(b) and 416.7(b), including  
21 the ability to do the following. She can lift and/or carry up to 20  
22 pounds occasionally and 10 pounds frequently. She can sit, stand  
23 and/or walk 6 hours in an 8 hour workday with normal breaks. She  
24 can frequently climb ramps and stairs. She can occasionally climb  
25 ladders, ropes, or scaffolds. She can frequently balance and crouch.  
26 She can frequently engage in gross handling, and fine fingering with  
27 the bilateral upper extremities. She can reach overhead with the right  
28 upper extremity occasionally. She can stoop, kneel and crawl  
occasionally. She must avoid concentrated exposure to extreme cold,  
heat and noise. She has sufficient concentration to understand,  
remember and carry-out simple, repetitive tasks with usual and  
customary breaks throughout an 8 hour workday. She can work

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1 superficially and occasionally with the general public. “Superficial”  
2 means that she can refer the public to others to respond to their  
3 demands/requests, but does not have to resolve them herself. She can  
4 respond to changes in the workplace as would be required only for  
simple, repetitive work.

5 AR. 37. At step four, the ALJ found that Plaintiff is unable to perform any past  
6 relevant work. AR 44.

7 At step five, the ALJ found Plaintiff could perform other work which exists  
8 in significant numbers in the national economy, including positions such as hand  
9 packagers or housekeeper. AR 45.

### 10 **Issues for Review**

- 11 1. Whether the ALJ properly evaluated the opinions of Plaintiff’s treating  
12 physician and evaluating physician;
- 13 2. Whether the ALJ properly determined Plaintiff’s residual functional capacity  
14 findings; and
- 15 3. Whether the ALJ reasonably evaluated Plaintiff’s symptom testimony.

### 16 **Discussion**

- 17 1. *Whether the ALJ properly considered and weighed the opinion evidence*

18 Plaintiff argues the ALJ failed to properly consider and weigh the medical  
19 opinion evidence. Specifically, she argues the ALJ improperly limited the weight  
20 of the opinions of her treating physician, Dr. Jacir-Marcano, and reviewing doctor,  
21 Dr. Palasi.

22 The medical opinion of a claimant’s treating physician is given “controlling  
23 weight” so long as it “is well-supported by medically acceptable clinical and  
24 laboratory diagnostic techniques and is not inconsistent with the other substantial  
25 evidence in [the claimant’s] case record.” 20 C.F.R. § 404.1527(c)(2); *Trevizo v.*  
26 *Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017). When a treating physician’s opinion  
27 is not controlling, it is weighted according to factors such as the length of the  
28 treatment relationship and the frequency of examination, the nature and extent of

1 the treatment relationship, supportability, consistency with the record, and  
2 specialization of the physician. 20 C.F.R. § 404.1527(c)(2)-(6); *Id.* “If a treating or  
3 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
4 may reject it only by providing specific and legitimate reasons that are supported  
5 by substantial evidence. *Trevizo*, 871 F.3d at 675 (quoting *Ryan v. Comm’r of Soc.*  
6 *Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)). “[A]n ALJ errs when he rejects a  
7 medical opinion or assigns it little weight while doing nothing more than ignoring  
8 it, asserting without explanation that another medical opinion is more persuasive,  
9 or criticizing it with boilerplate language that fails to offer a substantive basis for  
10 his conclusion.” *Garrison v. Colvin*, 759 F.3d 995, 1012–13 (9th Cir. 2014)  
11 (citing *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996)).

#### 12 **1. Dr. Jacir-Marcano**

13 The ALJ gave little weight to Dr. Jacir-Marcano’s October, 2012 opinion  
14 that Plaintiff was unable to sustain even sedentary work. She ultimately concluded  
15 that “Dr. Jacir may have exaggerated the severity of Plaintiff’s medical condition  
16 in an attempt to help her obtain medical insurance.” AR 43. The ALJ believed that  
17 Dr. Jacir-Marcano relied too heavy on Plaintiff’s subjective complaints and not on  
18 the objective medical evidence. In early October, 2012, Dr. Jacir-Marcano  
19 indicated that Plaintiff may have multiple sclerosis because an MRI indicated  
20 demyelinating plaques of the left parietal lobe. Notably, he wrote that this  
21 diagnosis was confirmed by a neurosurgeon, but that Plaintiff was being referred to  
22 the University of Washington. AR 749. After visit to the University of Washington,  
23 doctors, including Dr. Jacir-Marcano, concluded that it was doubtful that she had  
24 MS.

25 Here, the ALJ erred in rejecting Dr. Jacir-Marcano’s opinions by accusing  
26 him of exaggerating Plaintiff’s symptoms so she could obtain disability benefits.  
27 The record indicates that Dr. Jacir-Marcano obtained the MS diagnosis from a  
28 neurologist. It was reasonable and appropriate for him to rely on this diagnosis. It



1 is also clear from the record that once further testing indicated that MS was not the  
2 correct diagnosis, Dr. Jacir-Marcano continued to treat Plaintiff and to try to  
3 determine what was causing her pain. The ALJ relied on speculation to reject his  
4 opinion. This was error, especially in light of the extensive record of treatment  
5 provided by Dr. Jacir-Marcano. A review of the records indicates that Dr. Jacir-  
6 Marcano's opinion is based on clinical observations, rather than just Plaintiff's  
7 self-reports. The ER visits and visits to Water's Edge for pain management,  
8 including steroid injections also support and corroborate Dr. Jacir-Marcano's  
9 ultimate conclusions. It was improper for the ALJ to reject Dr. Jacir-Marcano's  
10 opinions without considering his significant experience in treating her symptoms  
11 that are documented in his treatment notes.

12 In October, 2012, based on the MS diagnosis provided by a neurosurgeon,  
13 Dr. Jacir-Marcano indicated that Plaintiff was severely limited and unable to  
14 complete sedentary work due to Multiple Sclerosis because an MRI indicated the  
15 presence of demyelinating plaques over her left parietal lobe. AR 1165-65. Dr.  
16 Jacir-Marcano's opinion was based on a neurosurgeon's diagnosis and was not  
17 based on speculation.

18 In October, 2014, Dr. Jacir-Marcano indicated that Plaintiff was severely  
19 limited and unable to complete sedentary work due to her diabetic neuropathy and  
20 chronic pain syndrome. AR 1190. Dr. Jacir-Marcano's opinion is well-supported  
21 by medically acceptable clinical and laboratory diagnostic techniques and is not  
22 inconsistent with the other substantial evidence in Plaintiff's case record.

23 The ALJ erred in giving little weight to Plaintiff's treating physician's  
24 opinion.

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## 27 2. Dr. Myrna Palasi

1 The ALJ gave little weight to Dr. Palasi's opinion because she  
2 provided the opinion for the Department and Social and Health Services  
3 (DSHS) purposes. While not bound to accept the determinations from other  
4 agencies, it was error to reject the opinion outright without considering the  
5 reliability and supportability of the opinion. SSR 06-03p (stating that  
6 "evidence of a disability decision by another governmental or  
7 nongovernmental agency cannot be ignored and must be considered"). The  
8 ALJ failed to provide persuasive, specific, and valid reasons for not  
9 according the Washington State decision great weight. Moreover,  
10 Washington State uses the same five-step sequential analysis that SSA uses  
11 to determine disability. *See* WAC 388-449-0005 through 388-449-0100; *see*  
12 *also* WAC 338-449-0001(e) ("The SEP is the sequence of five steps. Step 1  
13 considers whether you are currently working. Steps 2 and 3 consider  
14 medical evidence and whether you are likely to meet or equal a listed  
15 impairment under Social Security's rules. Steps 4 and 5 consider your  
16 residual functional capacity and vocational factors such as age, education,  
17 and work experience in order to determine your ability to do your past work  
18 or other work"). The ALJ erred in rejecting Dr. Palasi's opinion. *See e.g.*  
19 *Holbrook v. Berryhill*, 696 Fed. Appx. 846 (9th Cir. 2017) (unpublished  
20 memorandum).

21 Dr. Palasi completed a Medical Review for the Washington State  
22 Department of Social and Health Services. She indicated she agreed with a  
23 "less than sedentary RFC." AR 1094. The ALJ's rejection of this opinion is  
24 not supported by substantial evidence.

25 2. *Evaluation of Plaintiff's credibility*

26 Plaintiff argues the ALJ improperly discredited her symptom claims.  
27 The ALJ provided the following reasons for discrediting Plaintiff's  
28 symptom claims: (1) Dr. Toews' assessment indicates that despite her

1 allegations, Plaintiff does not have any memory deficits or impairments and  
2 her mood had stabilized by September, 2015; (2) Plaintiff has a history of  
3 being non-compliant; and (3) physical examinations in 2015 indicate range  
4 of motion testing was normal for the upper extremities as well as her back  
5 and fingers.

6 An ALJ's assessment of a claimant's credibility is entitled to "great weight."  
7 *Anderson v. Sullivan*, 914 F.2d 1121, 1124 (9th Cir.1990). When there is no  
8 evidence of malingering, the ALJ must give "specific, clear and convincing  
9 reasons" for rejecting a claimant's subjective symptom testimony. *Molina v. Astrue*,  
10 674 F.3d 1104, 1112 (9th Cir. 2012) (citation omitted). If the ALJ's credibility  
11 finding is supported by substantial evidence in the record, the reviewing court  
12 "may not engage in second-guessing." *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th  
13 Cir. 2002).

14 In recognition of the fact that an individual's symptoms can sometimes  
15 suggest a greater level of severity of impairment than can be shown by the  
16 objective medical evidence alone, 20 C.F.R. §§ 404.1529(c) and 416.929(c)  
17 describe the kinds of evidence, including the factors below, that the ALJ must  
18 consider in addition to the objective medical evidence when assessing the  
19 credibility of an individual's statements:

- 20 1. The individual's daily activities; 2. The location, duration,  
21 frequency, and intensity of the individual's pain or other symptoms;
- 22 3. Factors that precipitate and aggravate the symptoms; 4. The type,  
23 dosage, effectiveness, and side effects of any medication the  
24 individual takes or has taken to alleviate pain or other symptoms; 5.  
25 Treatment, other than medication, the individual receives or has  
26 received for relief of pain or other symptoms; 6. Any measures  
27 other than treatment the individual uses or has used to relieve pain  
28 or other symptoms (*e.g.*, lying flat on his or her back, standing for  
15 to 20 minutes every hour, or sleeping on a board); and 7. Any  
other factors concerning the individual's functional limitations and  
restrictions due to pain or other symptoms.

1 SSR 96-7P, 1996 WL 374186. Daily activities may be grounds for an adverse  
2 credibility finding if (1) Plaintiff's activities contradict her other testimony, or (2)  
3 Plaintiff "is able to spend a substantial part of his day engaged in pursuits  
4 involving the performance of physical functions that are transferable to a work  
5 setting." *Orn*, 495 F.3d at 639 (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
6 1989)).

7 Here, the ALJ's credibility assessment is not supported by the record.  
8 There is nothing in the record to suggest that if Plaintiff had been compliant  
9 with her diabetes treatment, she would not experience chronic pain. Rather,  
10 the record substantially supports the conclusion that Plaintiff's chronic pain  
11 started after she was assaulted by her boyfriend.

12 Moreover, the ALJ failed to adequately take into consideration the  
13 entire record, including her numerous trips to the emergency room, and the  
14 fact that she received numerous injections for her chronic pain. Nowhere in  
15 the record does any doctor suggest that she is medication seeking, or that  
16 she is exaggerating her symptoms. On the contrary, the record indicates  
17 Plaintiff has a "long history of waxing and waning neurological symptoms  
18 including vision, upper and lower extremity pain and weakness." AR 755.  
19 The ALJ's credibility assessment is not supported by substantial evidence  
20 in the record. The ALJ's reasons for discrediting Plaintiff's symptoms are  
21 not convincing.

### 22 3. *Whether the ALJ's error were harmless*

23 The ALJ concluded that Plaintiff has the residual functional capacity to  
24 perform light work with certain limitations and concluded that she was not disabled  
25 because she could complete the job of hand packagers or housekeeper This RFC is  
26 not supported by substantial evidence. Notably, the ALJ failed to provide a medical  
27 basis for the manipulative limitations that she set in Plaintiff's RFC. It is clear from  
28 the record that Plaintiff has some degree of limitation in the use of her hands;

1 however, no doctor has ever offered an opinion as to the severity of this limitation.  
2 This was not harmless error.

3       Additionally, the ALJ failed to account for the fact that the record  
4 substantially demonstrates that chronic pain would likely interfere with Plaintiff's  
5 ability to sustain a complete work day or work week.

6       Finally, the ALJ erred in concluding that Plaintiff is able to communicate in  
7 English. AR 44. This is incorrect. It is clear from the record that Plaintiff only  
8 communicates in Spanish and needs an interpreter in order to communicate in  
9 English. The ALJ utilized an interpreter for the hearing. Dr. Toews utilized an  
10 interpreter to conduct his psychological assessment. Medical records indicate that  
11 medical providers communicate with Plaintiff in Spanish, or use interpreters.

12       The medical-vocational rules provide that a finding of "disabled" is  
13 warranted for individuals age 45–49 who: (i) Are restricted to sedentary work; (ii)  
14 Are unskilled or have no transferable skills; (iii) Have no past relevant work or can  
15 no longer perform past relevant work; and (iv) Are unable to communicate in  
16 English, or are able to speak and understand English but are unable to read or write  
17 in English. 20 C.F.R. pt. 404, subpt. P, app. 2, §201.00(h)(1). Section 201.09 of  
18 Table 1<sup>1</sup> indicates that an individual whose RFC is sedentary, who is closely  
19 approaching advanced age, who has limited or less education, and has prior  
20 unskilled work is considered disabled. Section 201.17 indicates that an individual  
21 whose RFC is sedentary who is a younger individual age 45–49, is illiterate or  
22 unable to communicate in English, and has prior unskilled work is disabled.

23       Section 202.09, which covers the RFC for light work, indicates that a  
24 claimant who is closely approaching advanced age (ages 50-54), is illiterate or  
25 unable to communicate in English and who has prior unskilled work experience is  
26 \_\_\_\_\_

27 <sup>1</sup> Table 1: Residual Functional Capacity: Maximum Sustained Work Capability  
28 Limited To Sedentary Work As A Result Of Severe Medically Determinable  
Impairment(s).

1 disabled. Plaintiff was 49 years old and 5 months at the time she applied for  
2 benefits. While not dispositive, the Court notes that if Plaintiff had waited a mere  
3 seven months to file for benefits, the ALJ's RFC of light work would mandate that  
4 Plaintiff be deemed disabled. She was 53 years at the time of the ALJ's decision.

### 5 **Conclusion**

6 The ALJ erroneously rejected medical opinion evidence and Plaintiff's  
7 symptom testimony. The only question then, is whether to remand a case for  
8 additional evidence or simply award benefits. *Sprague v. Bowen*, 812 F.2d 1226,  
9 1232 (9th Cir. 1987). The Ninth Circuit has instructed that where (1) the record has  
10 been fully developed and further administrative proceedings would serve no useful  
11 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting  
12 evidence, whether claimant testimony or medical opinion; and (3) if the improperly  
13 discredited evidence were credited as true, the ALJ would be required to find the  
14 claimant disabled on remand," the court should remand for an award of benefits.  
15 *Trevizo*, at 683.

16 Here, remand for the calculation and award of benefits is warranted. There  
17 are no outstanding issues that require resolution and there is no serious doubt that  
18 Plaintiff is disabled. As such, remanding for an immediate award of benefits is  
19 proper. The ALJ erred in determining that Plaintiff was capable of light work.  
20 Moreover, even if Plaintiff were able to complete sedentary work, the medical-  
21 vocational rules mandate that she be deemed disabled.

22 Accordingly, **IT IS HEREBY ORDERED:**

23 1. Plaintiff's Motion for Summary Judgment, ECF No. 12, is **GRANTED**.

24 2. Defendant's Motion for Summary Judgment, ECF No. 14, is **DENIED**.

25 3. The decision of the Commissioner denying benefits is **reversed** and  
26 **remanded** for an award of benefits, with a disability onset date of September 18,  
27 2012.

28 4. The District Court Executive is directed to enter judgment in favor of  
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1 Plaintiff and against Defendant.

2 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
3 file this Order, provide copies to counsel, and close the file.

4 **DATED** this 30th day of July 2018.



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10 Stanley A. Bastian  
11 United States District Judge  
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